

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANKLIN H. WRIGHT,
Plaintiff,

v.

BRIAN STRETCH, et al.,
Defendants.

No. C 16-505 CW

ORDER DISMISSING
COMPLAINTS

FRANKLIN H. WRIGHT,
Plaintiff,

v.

THOMAS E. PEREZ, et al.,
Defendants.

No. C 16-513 CW

Plaintiff Franklin H. Wright has been granted in forma pauperis status in both of the above-captioned cases. Under this statute, the Court shall dismiss such a case "at any time" if it determines that it "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(b). The Court finds that both operative complaints fail to state a claim on which relief may be granted. Thus, the Court dismisses both complaints.

I. Wright v. Stretch, Case No. 16-505

a. Background

In this case, Plaintiff filed suit against Brian Stretch, acting United States Attorney for the Northern District of

1 California, and Thomas Perez, Secretary of the United States
2 Department of Labor. The judge previously assigned to this case
3 dismissed the original complaint with leave to amend.

4 In his original complaint, Plaintiff described both a
5 previously-filed Illinois bankruptcy and "FTCA claim letters re:
6 employment conditions." Docket No. 1, Complaint at 2-3. He
7 sought mandamus to compel employees within the Department of
8 Justice or the Department of Labor, or both, to answer various
9 questions. Id. at 3, 5-6. He alleged that both departments owed
10 him investigations and the results of their investigations. Id.
11 at 4. He also discussed "unlawful employer actions" and requested
12 monetary remedies, reputational correction and further prosecution
13 of former employers. Id. at 6-7.

14 The court concluded that Plaintiff's complaint was "frivolous
15 or fail[ed] to state a claim upon which relief can be granted."
16 Docket No. 6, February 8, 2016 Order at 2. It identified several
17 shortcomings, including that Plaintiff did not describe the
18 connection between the Illinois litigation and this case, id. at
19 2, Plaintiff did not explain "how his previous tort claims or
20 bankruptcy filings obligated these defendants to investigate his
21 concerns," id. at 3, and Plaintiff provided no authority for
22 seeking to compel Defendants to answer his list of questions, id.

23 In his First Amended Complaint (1AC), Docket No. 7, at issue
24 here, Plaintiff requests relief under 28 U.S.C. § 1361, the
25 section authorizing district court mandamus actions. As
26 background, Plaintiff explains that, based on "plaintiff-supplied
27 and docketed memos in the Chicago-based bankruptcy, an U.S.
28 Trustee operating under 11 U.S.C. Sec. 704(a) would investigate

1 the financial affairs of a litigant in the bankruptcy process and
2 subsequently commence lawsuits on the beneficiary's behalf,
3 assuming compelling reasons were identified." Id. at 4.
4 Plaintiff alleges that the United States Trustee, who is not a
5 Defendant in this case, was obliged to investigate claims stemming
6 from "anecdotal facts" in Plaintiff's bankruptcy filings; these
7 "facts" include workplace harms allegedly perpetrated by previous
8 employers based in northern California, including harassment,
9 underpayment and a hostile work environment. Id. at 4-5.
10 Plaintiff asks the Court to compel investigation of these
11 underlying alleged employer wrongs, to present the results to
12 Plaintiff, and to compel the Department of Justice and the
13 Department of Labor to present to Plaintiff the status of his
14 "F.T.C.A. claim letters." Id. at 10.¹

15 Plaintiff claims certain duties owed to him. He cites 28
16 U.S.C. § 530B, which describes "Ethical standards for attorneys
17 for the Government," California Business and Professions Code
18 sections 6067-68, which describe general duties of attorneys and
19 their oath, and general California case law concerning fiduciary
20 duties. Section 6068(h) states that it is the duty of an attorney
21 "[n]ever to reject, for any consideration personal to himself or
22 herself, the cause of the defenseless or the oppressed."
23 Plaintiff then lists several instances in which he was
24 "defenseless," namely when he was a criminal defendant and when he

25 ¹ Plaintiff cites 28 U.S.C. § 2401(b), which states that,
26 before filing a tort claim against the United States, the claim
27 must be presented in writing to the appropriate federal agency.
28 Id. at 8.

1 was attacked. 1AC at 6-7. Plaintiff explains that, because he
2 has been "defenseless" or "oppressed," the United States Attorney
3 "cannot reject his request to remedy." Id. at 9. Section 6068(m)
4 states that it is the duty of an attorney to "respond promptly to
5 reasonable status inquiries of clients and to keep clients
6 reasonably informed of significant developments in matters with
7 regard to which the attorney has agreed to provide legal
8 services." Plaintiff explains that he is the Department of
9 Justice's "de facto client" because he has "paid taxes, obeys the
10 law, the U.S. Attorneys' Office is funded by taxes, plaintiff's
11 claims are true and actual and were recognized as such by an Ohio-
12 based Federal court." Id. at 7 & n.3.

13 Plaintiff also presents allegations regarding Defendants'
14 knowledge of his grievances. Plaintiff states that attorneys have
15 been informed of his claims through his Ohio case and through his
16 "3 FTCA claim letters filed with both D.C.-based DOJ offices and
17 the San Francisco Offices of the U.S. Attorney." Id. at 7. He
18 explains that because the United States Trustee "would have
19 required Bay Area-based assistance at the time the memoranda were
20 filed . . . in carrying out their duty to investigate," it is
21 "reasonable to assume that the U.S. Attorney for the Northern
22 District of California or an unknown-to-plaintiff title within the
23 U.S. Department of Justice (N.D. Cal.) would have been contacted
24 to assist in investigation." Id. at 8.

25 b. Discussion

26 A writ of mandamus may be granted when (1) "the plaintiff's
27 claim is clear and certain"; (2) the duty is "ministerial and so
28 plainly prescribed as to be free from doubt"; and (3) "no other

adequate remedy is available." Or. Nat. Res. Council v. Harrell,
52 F.3d 1499, 1508 (9th Cir. 1995). The "extraordinary remedy of
mandamus lies within the discretion of the trial court," even
where a Plaintiff satisfies these three requirements. Id.

Here, Plaintiff's allegations remain insufficient as to the
duty Defendants owe to Plaintiff. His theory seems to be as
follows. In his bankruptcy case, he mentioned potential workplace
wrongs. As a result, the United States Trustee was obliged to
commence litigation against Plaintiff's former employers or at
least investigate these allegations of workplace wrongs.

Defendants Brian Stretch and Thomas Perez knew about the United
States Trustee's actions relating to Plaintiff and his former
employers. Because Plaintiff had been "defenseless" in the past,
Defendants cannot turn their back on Plaintiff. Alternatively,
because Plaintiff is a "de facto client" of various governmental
departments, he is entitled to their communication and
professional services. Thus, Defendants owe Plaintiff a duty to
answer his questions and to investigate his claims.

There are many flaws with this theory. First, Plaintiff
cites no law stating that the United States Trustee was obliged to
commence litigation against or investigate Plaintiff's former
employers. Instead, under the subsection Plaintiff cites, the
Trustee is obliged to "investigate the financial affairs of the
debtor." 11 U.S.C. § 704(a)(4). Second, an attorney's duty not
to reject the cause of the defenseless or oppressed for personal
reasons does not mean that all attorneys must investigate
Plaintiff's claims. Third, there is no de facto attorney-client
relationship based on paying taxes. Fourth, Plaintiff has pointed

1 to no other possible basis for a fiduciary relationship. None of
2 Plaintiff's theories amount to a duty that any Defendant owes
3 Plaintiff to investigate his claims or to communicate with him.

4 Because Plaintiff's claim is not "clear and certain," and
5 because the duties alleged are not "ministerial and so plainly
6 prescribed as to be free from doubt," the Court DISMISSES
7 Plaintiff's 1AC. Because Plaintiff has again failed to allege a
8 duty, it is dismissed with prejudice.

9 II. Case No. 16-513

10 This case is another mandamus action that Plaintiff filed
11 against both Thomas Perez and Brian Stretch, but also against the
12 United States Interagency Council on Homelessness.² The judge
13 previously assigned this case granted Plaintiff in forma pauperis
14 status and directed service. The case was later transferred to
15 this Court as related to case number 16-505. The Court may
16 perform the in forma pauperis screening described above at any
17 time. 28 U.S.C. § 1915(e)(2)(b).

18 In his Complaint, Plaintiff lists several instances in which
19 he was harassed, defamed or otherwise mistreated while living in
20 northern California. He had filed another case in the Northern
21 District of California, Wright v. United States Interagency
22 Council on Homelessness, No. 14-353, "in order to inform empowered
23 and accountable governmental agencies of unlawful activity where
24 Plaintiff was a victim or witness." Docket No. 1, Complaint at 3.
25 Plaintiff seeks to compel "employees and persons holding presumed
26

27 ² The Complaint also mentions several other governmental
28 agencies and individuals.

1 accountability within sub-entities of the U.S. DOJ, U.S. Dept. of
2 Labor, and U.S. Department of Health and Human Services and all
3 other accountable agencies to answer specific questions Plaintiff
4 maintains and poses herein, which would have been asked during
5 proper investigation," citing 28 U.S.C. § 535 and Federal Rule of
6 Evidence 201(e), and to "compel appropriate corrective action."
7 Id.³ Plaintiff seeks to compel Defendants to answer a list of
8 enumerated questions. Complaint at 5-6. Plaintiff also seeks "to
9 compel the F.B.I., U.S. Dept. of H&HS, and the acting U.S.
10 Attorney for the Northern District of California to adjoin
11 gathered evidence to Plaintiff's State-court filed findings in
12 preparation for presentment to the Grand Jury for indictment and
13 for arrest of key and accountable personnel." Id. at 7. Further,
14 Plaintiff wishes Defendants to "present to Plaintiff an action
15 plan based upon answers to Plaintiff's posed questions to remedy
16 both 1) damage caused to Plaintiff's life by named entities in
17 state-based cases or inform petitioner-plaintiff of reasons for
18 borrowing petitioner's time and 2) plan to remedy apparent
19 criminal activity within S.F.-based governmental and 501c3
20 organizations." Id. at 7-8.

21 This Complaint fails to state a claim. As in case number 16-
22 505, discussed above, Plaintiff describes general fiduciary duty
23 law, 28 U.S.C. § 530B and California Business and Professions Code
24 section 6068, as the basis for Defendants' duties to Plaintiff.

25 ³ Notably, 28 U.S.C. § 535 states that the Attorney General
26 and the Federal Bureau of Investigation "may investigate any
27 violation of Federal criminal law involving Government officers
28 and employees"; Federal Rule of Evidence 201 governs judicial
notice of adjudicative facts.

1 As explained above, none of these citations demonstrates that
2 Defendants have a duty toward Plaintiff. Plaintiff also cites 28
3 U.S.C. § 547, which lists the duties of a United States Attorney.
4 Contrary to Plaintiff's assertion, this statute does not
5 demonstrate that any Defendant has a "duty to correct" any of the
6 alleged wrongs Plaintiff describes.

7 In addition, it is not clear who Plaintiff is suing or why
8 mandamus is the only available remedy.

9 For all these reasons, the Complaint in this case is
10 DISMISSED. Because Plaintiff has not yet had an opportunity to
11 amend, it is dismissed with leave to amend.

12 III. Conclusion

13 The Court DISMISSES Plaintiff's LAC in Case Number 16-505.
14 The Court will direct entry of judgment in this case.

15 The Court DISMISSES Plaintiff's Complaint in Case Number 16-
16 513. If Plaintiff chooses to amend his Complaint, he must do so
17 within thirty days of this order. Failure to amend timely shall
18 result in dismissal of this action with prejudice pursuant to
19 Federal Rule of Civil Procedure 41(b).

20 IT IS SO ORDERED.

21 Dated: April 4, 2016



22 CLAUDIA WILKEN
23 United States District Judge
24
25
26
27
28